

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

PENN-AMERICA INSURANCE
COMPANY,

Plaintiff,

v.

AMERIFIT WELLNESS CENTER,
L.L.C., *et al.*

Defendants.

§ § § § § § CIVIL ACTION NO. H-10-1565

ORDER ON MOTIONS TO DISMISS

On September 24, 2010, the court heard argument on and considered the following motions:

Defendant McClelland & Hine, Inc.'s and Jerome Nash's 12(b)(6) Motion to Dismiss for Plaintiff's Failure to State a Claim and 12(b)(1) Motion to Dismiss for Lack of Subject Matter Jurisdiction (Docket Entry No. 11).

Defendants Amerifit Wellness Center L.L.C., James Devin Parrish and John Bergeron's 12(b)(1) and 12(b)(1) Motions to Dismiss (Docket Entry No. 12).

Defendant McClelland & Hine, Inc.'s and Jerome Nash's Motion to Dismiss Cross/Plaintiffs/Defendants Amerifit Wellness Center, L.L.C., James Devin Parrish and John Bergeron's Cross-Claim (Docket Entry NO. 21).

After considering the motions, responses, and arguments of the parties, this court enters the following order:

1. Defendants Amerifit Wellness Center, L.L.C., James Devin Parrish and John Bergeron's 12(b)(6) and 12(b)(1) Motions to Dismiss, (Docket Entry No. 12), are denied.

2. Defendant McClelland & Hine, Inc.'s and Jerome Nash's 12(b)(6) Motion to Dismiss for Plaintiff's Failure to State a Claim and 12(b)(1) Motion to Dismiss for Lack of Subject-Matter Jurisdiction, (Docket Entry No. 11), are granted.

3. Defendant McClelland & Hine, Inc.'s and Jerome Nash's Motion to Dismiss Cross/Plaintiffs/Defendants Amerifit Wellness Center, L.L.C., James Devin Parrish, and John Bergeron's Cross-Claim, (Docket Entry No. 21), is granted.

4. The claims or cross-claims asserted by Plaintiff Penn-America Insurance Company or Defendants/Cross-Plaintiffs Amerifit Wellness Center L.L.C., James Devin Parrish, and John Bergeron against Defendants/Cross-Defendants for monetary damages are dismissed, without prejudice.

SIGNED on October 13, 2010, at Houston, Texas.



Lee H. Rosenthal
United States District Judge